UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION	**Master File No. 12-MD-02311**
PRODUCT(S): **WIRE HARNESS SYSTEMS**	
THIS DOCUMENT RELATES TO: **All Actions**	

JOINT MEMORANDUM OF PLAINTIFFS AND DEFENDANTS REGARDING SUBMISSION OF PROPOSED ORDERS REFLECTING JUNE 15, 2012 STATUS CONFERENCE RULINGS

Direct Purchaser Plaintiffs, Automobile Dealer Plaintiffs and End Payor Plaintiffs (collectively "Plaintiffs") and Defendants, by their undersigned counsel, submit this joint memorandum regarding the proposed orders reflecting the Court's June 15, 2012 status conference rulings that the Court instructed the parties to submit.

All parties are pleased to report to the Court that they are in agreement with respect to the proposed Case Management Order No. 2 ("CMO No. 2"), relating to the wire harness systems cases and attached hereto as Exhibit 1, as well as the documents attached thereto (Stipulation and Protective Order (Exhibit A to CMO No. 2) and Initial Discovery Plan (Exhibit B to CMO No. 2)).

Plaintiffs are also separately tendering for the Court's consideration a proposed Case Management Order No. 3 ("CMO No. 3"), attached hereto as Exhibit 2, regarding the

appointment of interim lead and liaison counsel for the additional automotive parts cases that have been transferred to the Court, or that may subsequently become part of *In re Automotive Parts Antitrust Litigation*, Master File No.12-MD-02311. Because the Defendants did not understand the Court to have issued a formal ruling on this issue at the June 15, 2012 status conference, Defendants do not agree with Plaintiffs that the proposed CMO No. 3 should be entered at this juncture. The bases for the Plaintiffs' and Defendants' respective positions are set forth below.

Plaintiffs' Position. Plaintiffs believe that the Court should enter proposed CMO No. 3 at this time. The proposed order merely formalizes the leadership ruling made by the Court at the last status conference. Entering CMO No. 3 now is appropriate because:

(1) on June 15, 2012, a case management hearing was specifically held in MDL No. 2311, *In re Automotive Parts Antitrust Litigation*;

(2) the decision of the Judicial Panel on Multidistrict Litigation (the "MDL Panel") not to create new MDL dockets, but instead to subsume all automotive parts cases within MDL 2311 pending before the Court, was expressly listed as part of the Court's agenda and was discussed at length during the hearing;

(3) the proposed CMO No. 3 memorializes the Court's ruling made on the record at the hearing concerning leadership. On page 32 of the transcript of the June 15 hearing the Court, after a discussion about having additional automobile parts cases come under the current lead and liaison counsel structure, stated that the Court was "not going to change it." The Court later stated that "it is very efficient to have the same attorneys handle everything." *Id*. at 33.

(4) at the end of the hearing, the Court instructed counsel for the parties "to get together to submit orders that are consistent with what we did here today." *Id*. at 88. And that is what

Plaintiffs have done with proposed CMO No. 3. The relevant pages from the transcript of the Court's June 15 hearing are attached hereto as Exhibit 3.

Further, while Defendants claim to be concerned about the interests of other counsel, Plaintiffs are unaware of any opposition to the entry of CMO No. 3 at this time. Indeed, counsel for end-payor plaintiffs in the two cases cited by Defendants herein were in attendance at the June 15 hearing and support the entry of the proposed leadership order.

For these reasons, Plaintiffs respectfully request that the Court enter proposed CMO No. 3 at this time.

Defendants' Position. Although the topic of lead and liaison counsel for certain other non-wire harness system automotive parts cases was discussed at the June 15, 2012 status conference, those cases were not before the Court on June 15, and the Court did not issue a formal ruling on this issue. Defendants' position is based on the facts that

(1) the discussion of lead and liaison counsel for non-wire harness system automotive parts cases was raised during a status conference initially noticed in and relating solely to the automotive wire harness system cases (*see* this Court's Notice of Second Status Conference and Request for Agenda Items, *In re Automotive Wire Harness Systems Litigation*, Docket No. 112 (filed 06/05/12));

(2) the leadership topic was raised *sua sponte* by counsel for Plaintiffs and was *not* – contrary to Plaintiffs' suggestions – listed on the Court's agenda. Indeed, while plaintiffs claim that the MDL's intention to "subsume *all* automotive parts cases within MDL 2311 pending before the Court . . . was *expressly* listed as part of the Court's agenda" (emphasis added), neither aspect of that statement is true. First, the MDL Panel's June 12 Order related only to instrument panel clusters, fuel senders and heater control panels – *not* "all" auto parts cases.

Second, as relevant here, Item I of the Court's final agenda for the June 15 status conference simply stated: "JPML June 12, 2012 Transfer Order." (*See* this Court's Agenda for the Second Status Conference, *In re Automotive Parts Antitrust Litigation*, Docket No. 115 (filed 06/12/12));

Moreover, far from reflecting a belief that it was clear (and "express" in the hearing agenda) that the MDL Panel intended to subsume all auto parts cases within MDL 2311, Item 2 of the Court's agenda for the June 15 conference instead reflected the Court's intention to discuss the "Relationship" (if any) between the cases included within MDL 2311 "with other Automotive Parts Price-Fixing Cases: Wheel Bearings . . . and Occupant Safety Restraint Systems." The Court did *not* assume that all such cases were subsumed within MDL 2311; to the contrary, the Court advised at the hearing that the wheel bearings case was, at least for the time being, going to remain with Judge Zatkoff (see Transcript at pp. 12-13, attached as Exhibit 4);

(3) neither counsel nor the parties in the other auto parts cases discussed at the hearing (the parties and counsel in which do *not* completely overlap with the parties and counsel already in the wire harness cases) had notice that leadership for those cases would be addressed during the status conference (indeed, not even wire harness counsel had such notice); and

(4) any ruling by the Court would be binding, including on non-parties that were absent from that conference.

While the Court made clear during the status conference its expectation to maintain the Plaintiffs' counsel leadership for the wire harness system cases in the other auto parts cases transferred to it -- and Defendants currently express no position on which lawyers should fill leadership roles in those non-wire harness system cases -- Defendants believe that the procedure the Court followed in the wire harness system cases is the appropriate procedure for the Court's

appointment of plaintiffs' lead and liaison counsel in the other auto parts cases; i.e., plaintiffs' counsel in those cases should present the issue to the Court by filing an appropriate motion for appointment, with notice to affected parties. Defendants do not believe that the June 15, 2012 status conference was intended to circumvent that process and, therefore, cannot stipulate to the language Plaintiffs seek in CMO No. 3.

Plaintiffs argue above that no plaintiffs' counsel have objected to the appointment of the wire harness leadership in the other cases. However, some plaintiffs' counsel did voice an objection before the MDL Panel to a single leadership structure for all car parts cases. At least Plaintiff Chris Gansen in the instrument panel clusters antitrust litigation and at least Plaintiff Vanessa Alexander in the fuel senders antitrust litigation made filings with the MDL Panel, stating: "while Plaintiff believes transfer to the same judge and district is appropriate to coordinate discovery, the cases are different and therefore each should be handled on a different track with different leadership." (Emphasis added.) [1] In addition, there may be other parties, including other defendants in other auto parts cases, who may or may not have a position on leadership -- and Defendants do not purport to speak for them here. Defendants point is simply that they received no opportunity to be heard and will not have such an opportunity if CMO No. 3 is entered at this juncture .

For all of these reasons, Defendants respectfully submit that the Court should decline to enter CMO No. 3 at this time.

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[1] Interested Party Response of Chris Gansen In Support of Plaintiffs Tommy Wilson's and Calvin Kendrick's Motion for Transfer of Related Actions to the Eastern District of Michigan for Coordinated or Consolidated Pretrial Proceedings Pursuant to 28 U.S.C. § 1407, *In re: Instrument Panel Clusters Antitrust Litigation*, MDL No. 2349, Docket No. 39 (filed 5/04/12), at 3; Interested Party Response of Vanessa Alexander In Support of Plaintiffs Calvin Kendrick's and Tommy Wilson's Motion for Transfer of Related Actions to the Eastern District of Michigan for Coordinated or Consolidated Pretrial Proceedings Pursuant to 28 U.S.C. § 1407, *In re: Fuel Senders Antitrust Litigation*, MDL No. 2350, Docket No. 23 (filed 4/27/12), at 3.

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Because of the above-described differences of position, the parties could not reach agreement on the proposed CMO No. 3, and therefore submit the issue to the Court for resolution.

Date: June 29, 2012

Respectfully submitted,

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